



**Republican  
National  
Committee**

**Counsel's Office**

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**By Fax**

**Commission Secretary &  
Rosemary C. Smith, Esq.  
Associate General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463**

**Re: The Republican National Committee's Comment on Draft Advisory  
Opinion 2006-24**

**Dear Ms. Smith:**

The Republican National Committee ("RNC") writes to comment on the Federal Election Commission's (the "Commission") Draft Advisory Opinion 2006-24, dated September 29, 2006, and consisting of two draft opinions, AO Draft A and AO Draft B. The RNC supports Draft B because it is consistent with FECA's statutory text, legislative history, and the Commission's past precedent and practice with respect to recount funds, both before and after the Bipartisan Campaign Reform Act's ("BCRA's") enactment.

Draft B states that the restrictions of 2 U.S.C. § 441i(e)(1)(A), outside of the statute's source prohibitions, do not apply to federal candidate or state party recount funds because related recount activities are not "in connection with an election for Federal office." As Draft B notes, the statutory definition of elections excludes recounts - a purposeful exclusion that the Commission made clear in the Explanation and Justification that accompanied the original recount regulations. *Draft AO 2006-24*, Draft B at 6-10 (*citations omitted*). As Draft B also notes, Congress was well aware of the Commission's treatment of recount funds during BCRA's enactment, and did nothing to suggest any such change with respect to the treatment of such funds. *See Lorillard v. Pons*, 434 U.S. 575 (1978); *Fla. Nat'l Guard v. Fed. Labor Relations Auth.*, 699 F.2d 1082 (11<sup>th</sup> Cir. 1983) ("Congressional silence in the Act indicates acceptance of the [agency's] prior practice"). Draft B also accurately reflects the Commission's practical application of the recount regulations in its AO's. *Draft AO 2006-24*, Draft B at 7-10 (*citing AO 1978-92, 1998-26.*)

**The Commission should adopt Advisory Opinion Draft B and, apart from the source prohibitions, exempt recount funds from BCRA's regulatory scope.**

Respectfully submitted,



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Chief Counsel**

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Deputy Counsel**

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